

FLUOR DANIEL FERNALD, INC

GENERAL PROVISIONS FOR COMMERCIAL ITEMS

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1.0 INSPECTION/ACCEPTANCE

The Seller shall only tender for acceptance those items or services that conform to the requirements of this contract. Fluor Daniel Fernald, Inc. (FDF) reserves the right to inspect or test any supplies or services that have been tendered for acceptance. FDF may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. Unless otherwise specified in the contract, acceptance occurs when FDF takes possession of the items of supply tendered or when it approves of services performed.

2.0 ASSIGNMENT

Neither this contract nor any portion hereof shall be assigned or delegated without FDF's prior written consent and any such assignment or delegations shall be void. FDF reserves the right to assign this contract to DOE or its designee, and in case of such assignment and notice thereof to the Seller, FDF shall have no further responsibility, hereunder.

3.0. CHANGES

Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

4.0 DISPUTES

(a) All disputes arising under or relating to this contract shall be resolved pursuant to the procedures of this clause. Any claim for the payment of a sum certain or other relief arising under or relating to this contract shall be made in writing by the claiming party to the other. Claims shall be subject to a written decision by the party against whom the claim is made within a reasonable time of submission. The Seller agrees to continue to perform this contract pending final resolution of any claims. The Seller shall have no right to stop work or otherwise fail to perform this contract in spite of pending claims and limits its rights to relief to equitable adjustment of the contract price and/or schedule. Negotiated resolution of all claims shall be memorialized in contract modifications. In the event the parties are unable to resolve any claims between them, the parties agree that in any court of competent jurisdiction to which the parties or either or them may resort for resolution the matter, such matter will be tried without jury and on the written record as established through the procedures set forth herein. Provided, however, either party may by prior written exception except from trial on the written record any matter of fact which that party alleges is relevant and material to the claim and is in dispute between the parties. FDF shall not be liable for, and the Seller waives any claim or potential claim of the Seller which was not reported by the Seller in accordance with the provisions of this clause prior to final payment. The Seller shall not be liable for, and FDF waives any claim or potential claim of FDF which was not made by FDF in accordance with the provisions of this clause prior to acceptance of the items of supply or service of this contract, except for such claims as FDF may have pursuant to any warranties applicable to this contract.

(b) Irrespective of the place of performance, this contract will be construed and interpreted according to the Federal law of Government contracts as enunciated and applied by Federal Courts, Boards of Contract Appeals and quasi-judicial agencies of the Federal Government. To the extent that law is not dispositive of any issue arising under or relating to this contract, the law of the state of Ohio shall apply. In the event either party hereto files suit on account of any issue arising under or relating to this contract, each party consents to that action being filed in the court of competent jurisdiction in and for Hamilton County, Ohio.

5.0 STOP-WORK ORDER

(a) FDF may, at any time, by written order to the Seller, require the Seller to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Seller, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Seller, or within any extension of that period to which the parties shall have agreed, FDF shall either

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination for Default, or the Termination for Convenience of FDF, clauses of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Seller shall resume work. FDF shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if --

(1) The stop-work order results in an increase in the time required for, or in the Seller's cost properly allocable to, the performance of any part of this contract; and

(2) The Seller asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if FDF decides the facts justify the action, FDF may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of FDF, FDF shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, FDF shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

6.0 EXCUSABLE DELAYS

The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify FDF in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to FDF of the cessation of such occurrence.

7.0 INVOICE

The Seller shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (a) Name and address of the Seller;
- (b) Invoice date;
- (c) Contract number, contract line item number, if applicable, and the order number, if applicable;
- (d) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (e) Shipping number and date of shipment including the bill of lading number and weight of shipment, if shipped on FDF's bill of lading;
- (f) Terms of any prompt payment discount offered;
- (g) Name and address of official to whom payment is to be sent; and
- (h) Name, title and phone number of person to be notified in event of defective invoice.

8.0 PATENT INDEMNITY

The Seller shall indemnify FDF, its parent, affiliates, subsidiaries and their officers, directors, employees and agents against liability, including costs, for actual or alleged direct or

contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Seller is reasonably notified of such claims and proceedings.

9.0 PAYMENT

Payment shall be made for items accepted by FDF that have been delivered to the delivery destination(s) set forth in this contract. FDF will make payment within thirty (30) days of invoice receipt. Payments under this contract may be made either by check, electronic funds transfer, or other automated means at the option of FDF. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

10.0 RISK OF LOSS

Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Seller until, and shall pass to FDF upon:

(a) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(b) Delivery of the supplies to FDF at the destination specified in the contract, if transportation is f.o.b. destination.

11.0 TAXES

The contract price includes all applicable Federal, State, and local taxes and duties.

12.0 TERMINATION FOR CONVENIENCE OF FDF

FDF reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Seller shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Seller shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of FDF using its standard record keeping system, have resulted from the termination. The Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give FDF any right to audit the Seller's records. The Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

13.0 TERMINATION FOR DEFAULT

FDF may terminate this contract, or any part hereof, for cause in the event of any default by the Seller, or if the Seller fails to comply with any contract terms and conditions, or fails to provide FDF, upon request, with adequate assurances of future performance. In the event of termination for cause, FDF shall not be liable to the Seller for any amount for supplies or services not accepted, and the Seller shall be liable to FDF for any and all rights and remedies provided by law. If it is determined that FDF improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

14.0 TITLE

Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where FDF takes physical

possession.

15.0 WARRANTY

The Seller warrants and implies that the items delivered hereunder are merchantable and fit for use for any particular purpose described in this contract. In the event, as part of the price of the items and/or services contracted for hereby, the Seller provides warranties other than as stated above, Seller shall warrant the items and/or services according to those terms and conditions as well as those stated herein.

16.0 LIMITATION OF LIABILITY

Except as otherwise provided by an express or implied warranty, the Seller will not be liable to FDF for consequential damages resulting from any defect or deficiencies in accepted items.

17.0 OTHER COMPLIANCES

The Seller shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

18.0 COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS AND SUBCONTRACTS

The Seller acknowledges that work performed under this contract is done as work subcontracted by FDF under contract to the U.S. Department of Energy. The Seller agrees to comply with FAR 52.222-26, Equal Opportunity (E.O. 11246); FAR 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. § 4212(a)); and FAR 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. § 793).

19.0 ORDER OF PRECEDENCE

Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) the schedule of supplies/services;
- (b) the Assignment, Disputes, Payment, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts and Subcontracts paragraphs of these General Provisions;
- (c) addenda to this solicitation or contract, including any license agreements for computer software;
- (d) solicitation provisions if this is a solicitation;
- (e) other paragraphs of these General Provisions;
- (f) other documents, exhibits, and attachments; and
- (g) the specification.